Simon v. Adzilla, Inc [New Media] et al Doc. 162

Scott R. Mosko (State Bar No. 106070)
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
Stanford Research Park
3300 Hillview Avenue
Palo Alto, California 94304
Telephone: (650) 849-6600
Facsimile: (650) 849-6666

Attorney for Defendants ConnectU Inc.,
Specially appearing for Cameron Winklevoss,
Tyler Winklevoss, and Divya Narendra

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

FACEBOOK, INC., and MARK ZUCKERBERG, Plaintiffs, v. CONNECTU LLC, (now known as CONNECTU INC.) CAMERON WINKLEVOSS, TYLER WINKLEVOSS, DIVYA NARENDRA, PACIFIC NORTHWEST SOFTWARE, INC., WINSTON WILLIAMS, WAYNE CHANG, and DAVID GUCWA, Defendants.	CASE NO. C 07-01389 RS **DEFENDANTS' ADMINISTRATIVE MOTION TO FILE UNDER SEAL EXHIBITS V-4, V-5-A, THROUGH V-5-D, V-5-H THROUGH V-5-J, V-5-M THROUGH V-5-P, V-5-R, V-7, V-8-E, V-8-G, V-8-H, X THROUGH X12 XIV AND XVII TO DECLARATION OF SCOTT R. MOSKO IN SUPPORT OF DEFENDANTS CONNECTU, INC., CAMERON WINKLEVOSS, TYLER WINKLEVOSS AND DIVYA NARENDRA'S OPPOSITION TO PLAINTIFFS' MOTION FOR EVIDENTIARY AND RELATED SANCTIONS, INCLUDING SANCTIONS PURSUANT TO 28 U.S.C. § 1927** **DECLARATION OF SCOTT R. MOSKO** **[PROPOSED] ORDER** Date: October 10, 2007 Time: 9:30 a.m. Dept.: 4 Judge: Hon. Richard Seeborg

Dockets.Justia.com

ADMINISTRATIVE MOTION FOR FILING UNDER SEAL

1. Papers Submitted For Filing Under Seal in Their Entireties

Pursuant to Civil Local Rules 7-11 and 79-5(b), Defendants respectfully hereby request leave of Court to file under seal in their entireties the following documents being lodged with the Clerk:

- **EXHIBITS V-4, V-5-A, THROUGH V-5-D, V-5-H THROUGH V-5-J, V-5-M THROUGH V-5-P, V-5-R, V-7, V-8-E, V-8-G, V-8-H, X THROUGH X12 XIV AND XVII TO THE TO DECLARATION OF SCOTT R. MOSKO IN SUPPORT OF DEFENDANTS CONNECTU, INC., CAMERON WINKLEVOSS, TYLER WINKLEVOSS AND DIVYA NARENDRA'S OPPOSITION TO PLAINTIFFS' MOTION FOR EVIDENTIARY AND RELATED SANCTIONS, INCLUDING SANCTIONS PURSUANT TO 28 U.S.C. § 1927**

Exhibit V-4 is a copy of Facebook, Inc.'s Opposition to Defendants' Motion to Quash Service of Complaint and Summons for Lack of Personal Jurisdiction, as filed May 11, 2006 that Plaintiff designated "Confidential" in the Superior Court for the County of Santa Clara action, Case No. 1:05-CV-047381 matter.

Exhibit V-5-A consists of excerpts from the transcript of the August 9, 2005 deposition of Cameron H. Winklevoss taken in the United States District Court for the District of Massachusetts, case no. 04-1923 (DPW) and designated "Confidential" under protective order in the action in the Superior Court for the County of Santa Clara, Case No. 1:05-CV-047381.

Exhibit V-5-B is a May 3, 2004 e-mail chain between Howard Winklevoss and Cameron Winklevoss marked "Confidential" under the protective order in the Superior Court for the County of Santa Clara action, Case No. 1:05-CV-047381.

Exhibit V-5-C consists of excerpts from the transcript of the January 16, 2006 deposition of Divya Narendra taken in the Superior Court for the County of Santa Clara action, Case No. 1:05-CV-047381 and designated "Confidential" under protective order in that matter.

Exhibit V-5-D is a May 4, 2004 e-mail chain between Cameron Winklevoss and Marc M. Pierrat marked "Confidential" under the protective order in the Superior Court for the County of Santa Clara action, Case No. 1:05-CV-047381.

Exhibit V-5-H consists of excerpts from the transcript of the January 16, 2006 deposition of Tyler Winklevoss taken in the Superior Court for the County of Santa Clara action, Case No. 1:05-CV-047381 and designated "Confidential" under protective order in that matter.

Exhibit V-5-I is a February 17, 2005 e-mail chain between Wayne Chang and David M. Shirley and others marked “Highly Confidential” or “Confidential” under the protective order in the Superior Court for the County of Santa Clara action, Case No. 1:05-CV-047381.

Exhibit V-5-J consists of excerpts from the transcript of the January 16, 2006 deposition of Cameron Winklevoss taken in the Superior Court for the County of Santa Clara action, Case No. 1:05-CV-047381 and designated “Confidential” under protective order in that matter.

Exhibit V-5-M is a June 21, 2004 e-mail from Marc M. Pierrat to Cameron Winklevoss and Divya Narendra marked “Confidential” under the protective order in the Superior Court for the County of Santa Clara action, Case No. 1:05-CV-047381.

Exhibit V-5-N is a August 16, 2004 e-mail from Cameron Winklevoss to Marc M. Pierrat marked “Confidential” under the protective order in the Superior Court for the County of Santa Clara action, Case No. 1:05-CV-047381.

Exhibit V-5-O is a May 3, 2004 e-mail chain between Howard Winklevoss and Cameron Winklevoss marked “Confidential” under the protective order in the Superior Court for the County of Santa Clara action, Case No. 1:05-CV-047381.

Exhibit V-5-P is a February 19, 2005 e-mail chain between Winston Williams and Wayne Chang marked “Confidential” under the protective order in the Superior Court for the County of Santa Clara action, Case No. 1:05-CV-047381.

Exhibit V-5-Q consists of excerpts from the transcript of the April 25, 2006 deposition of Mark Zuckerberg taken in the Superior Court for the County of Santa Clara action, Case No. 1:05-CV-047381 and designated “Confidential” under protective order in that matter.

Exhibit V-5-R consists of excerpts from the transcript of the January 16, 2006 deposition of Cameron Winklevoss taken in the Superior Court for the County of Santa Clara action, Case No. 1:05-CV-047381 and designated “Confidential” under protective order in that matter.

Exhibit V-7 is a Defendants’ Reply to Opposition to Motion to Quash Service of Complaint and Summons for Lack of Personal Jurisdiction, as filed May 24, 2006 (with subsequent corrected page citations) in the Superior Court for the County of Santa Clara action, Case No. 1:05-CV-047381 that Defendants designated “Highly Confidential.”

Exhibit V-8-B is a copy of Facebook's Bylaw s which Defendants have designated as "Confidential" in the Superior Court for the County of Santa Clara action, Case No. 1:05-CV-047381.

Exhibit V-8-E is a January 11, 2004 e-mail that Plaintiff designated as "Confidential" in the Superior Court for the County of Santa Clara action, Case No. 1:05-CV-047381.

Exhibit V-8-G is a Master Service Agreement that Plaintiff designated as "Confidential" in the Superior Court for the County of Santa Clara action, Case No. 1:05-CV-047381.

Exhibit V-8-H is a consists of excerpts from the transcript of the April 25, 2006 deposition of Mark Zuckerberg taken in the Superior Court for the County of Santa Clara action, Case No. 1:05-CV-047381 and designated "Confidential" under protective order in that matter.

Exhibit X is a true and correct copy of the Amended Response of Defendant Divya Narendra to Plaintiffs' First Set of Special Interrogatories (1-23) as served on March 9, 2006 in the Superior Court for the County of Santa Clara action, Case No. 1:05-CV-047381. It has been designated as Confidential by ConnectU pursuant to the Protective Order entered in that matter, and hence is subject to Local Civil Rule 79-5(d). This exhibit should remain sealed from public viewing pursuant to Civil Local Rule 79-5(b).

Exhibit XI is a transcript of deposition of Defendant Divya Narendra taken on January 16, 2006 in the Superior Court for the County of Santa Clara action, Case No. 1:05-CV-047381. This deposition transcript was designated as Highly Confidential by Defendants under the Stipulated Protective Order issued in the state court case on January 23, 2006. This exhibit should remain sealed from public viewing pursuant to Civil Local Rule 79-5(b).

Exhibit XII is a Declaration of Divya Narendra in Support of Plaintiff's Supplemental Brief in Opposition to Motion to Dismiss, Presenting New Evidence and Supplemental Authority in View of *PRAMCO* dated June 12, 2006 in the District of Massachusetts action, Civil Action No. 2004-11923-DPW. It has been designated as Confidential by ConnectU and should be sealed from public viewing pursuant to Civil Local Rule 79-5(b).

Exhibit XIV is the Limited Liability Company Operating Agreement of ConnectU, LLC dated April 6, 2004 and has been marked Confidential by ConnectU pursuant to the Protective Order entered in this matter, and hence is subject to Civil Local Rule 79-5(d). This exhibit should remain sealed from public viewing pursuant to Local Civil Rule 79-5(b).

Exhibit XVII is the transcript of deposition of Defendant Divya Narendra taken on June 16, 2006 in the District of Massachusetts action, Civil Action No. 2004-11923-DPW. This deposition transcript was designated as Confidential by Defendants under the Stipulated Protective Order issued in the Massachusetts action. This exhibit should remain sealed from public viewing pursuant to Civil Local Rule 79-5(b).

As required by Civil Local Rule 79-5(b), Defendants are lodging with the Clerk copies of the documents which have been designated "Highly Confidential" and "Confidential" (for filing under seal).

SUPPORTING DECLARATION OF SCOTT R. MOSKO

I, Scott R. Mosko, declare as follows:

1. I am an attorney admitted to practice in the State of California and the United States District Court for the Northern District of California, and a partner of Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., attorneys of record for Defendants Cameron Winklevoss, Tyler Winklevoss and Divya Narendra. The matters referred to in this declaration are based on my personal knowledge and if called as a witness I could, and would, testify competently to those matters.

2. The representations made above in this Administrative Motion are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed this 19th day of September, 2007, at Palo Alto, California.

By: /s/
Scott R. Mosko

[PROPOSED] ORDER

Upon good cause shown, **IT IS HEREBY ORDERED** that the following documents shall be received and filed under seal in their entireties by the Clerk:

> Exhibits V-4, V-5-A, through V-5-D, V-5-H through V-5-J, V-5-M through V-5-P, V-5-R, V-7, V-8-E, V-8-G, V-8-H, X through XII, XIV and XVII to the Declaration of Scott R. Mosko in Support of Defendants Connectu, Inc., Cameron Winklevoss, Tyler Winklevoss and Divya Narendra's Opposition to Plaintiffs' Motion for Evidentiary and Related Sanctions, Including Sanctions Pursuant to 28 U.S.C. § 1927

Dated: ____________, 2007

____
United States Magistrate Judge